

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 313 of 2014**

- Firaturam Yadav S/o Late Laibo Yadav Aged About 50 Years R/o Madpal, P.S. Nagarnar, Distt. Bastar C.G.

---- Appellant/claimant**Versus**

1. Baldev Sirah S/o Phool Das Sirah Aged About 28 Years R/o Bhairo Bhatapara, Kotpad, P.S. Kotpad Orrisa, Orissa (Driver)
2. Mohd. Saleem S/o Harun Yusuf R/o Kotpad, P.S. Kotpad Orrisa, Orissa (Owner)
3. Branch Manager Shri Ram General Insurance Company Ltd., Branch Office, 6th Floor, Shiv Mohan Bhawan, Vidhan Sabha Road, Pandari, Raipur C.G.

---- Respondents

For Appellant
For Respondent no.3

Shri P.K. Tulsyan, Advocate.
Shri Sangeet Kumar Kushwaha, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board**

11/03/2019

1. This is claimant's appeal seeking enhancement of compensation awarded by the Additional Motor Accidents Claims Tribunal, Bastar (FTC), Jagdalpur, District Bastar, C.G. (for short 'the Tribunal') in Claim Case No. 12 of 2013 vide award dated 22.02.2014.
2. As against the compensation of Rs.7,50,00/- claimed by the appellant/claimant by filing claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the grievous injuries sustained by him in the road accident on 25.02.2011, the Tribunal awarded a total sum of Rs.1,14,692/- along with interest @ 6% per annum from the date of application till its actual payment, fastened the liability on Insurance Company.

3. The Tribunal, on a close scrutiny of the evidence led by both the parties, held that the accident had occurred due to rash and negligent driving of Indica Car bearing registration No. CG04-H-7892 by its driver i.e., respondent No.1 herein: appellant/claimant sustained grievous multiple injuries on his head, legs, face, chest and other parts of the body. As such, appellant suffered 50% permanent disability. At the time of accident offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.
4. Learned counsel for the appellant submits that the appellant was a Cook, was earning Rs.3,000/- per month but learned Tribunal wrongly considered his income as per minimum wages. He submits that as per Doctor certificate Ex.A-17 the claimant suffered 50% permanent disability, on account of which his Cooking work as well as movement was restricted. Therefore, the appellant prays for enhancement of the compensation suitably. Further, the Tribunal has not granted any amount towards future prospect.
5. Counsel for the respondents opposed the arguments advanced by the appellant's counsel and stated that as per Doctor certificate permanent disability was not in respect of the whole body but it was in respect of a particular limb. Further, he submits that the Tribunal was also justified in assessing the income of the appellant as no evidence was adduced by the appellant in respect of his income. Thus, the amount awarded is strictly in accordance with law and needs no interference by this Court.
6. Heard learned counsel for the parties and perused the material available on record.
7. So far as, the income of the injured is concerned, though he has pleaded that he being Cook was earning Rs.6,000/- per month, however, no oral or documentary evidence has been adduced in support thereof. Thus, the Tribunal was justified in taking the income of the injured on notional basis as Rs.4,300/- per month. However, the Tribunal has committed an error in not

considering the permanent disability. Considering the pleading of the claimant, the disability certificate Ex.P-17 which shows that the claimant suffered 50% disability, the nature of job of the claimant in the facts and circumstances of the case it can be held that on account of the injuries the claimant suffered 25% loss of earning capacity. Further, the Tribunal was also not justified in ignoring the future prospect of the claimant which should have been 10% in the present case as the injured was 55 years of age. Therefore, in view of the decisions of the Supreme Court in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121, & National Insurance Co. Ltd Versus Pranay Sethi** reported in **(2017) 16 SCC 680**, the compensation is reassessed as under:-

S.No	Head	Calculation
1.	Notional Income of the claimant	Rs. 4,300/- i.e. Rs.51,600/- per annum.
2.	Future prospect 10%	Rs. 5,160/- Rs.51,600 + Rs.5,160 = Rs.56,760/-
3.	Loss of earning capacity @ 25%	Rs.14,190/-
4.	Multiplier of 11 applied	Rs. 1,56,090/-
5.	For pain and suffering	Rs. 10,000/-
6.	For medical expenses	Rs.28,492/-
7.	For special diet	Rs.3,000/-
8.	For attendant	Rs.2,000/-
9.	For loss of amenities	Rs.10,000/-
Total		Rs.2,09,582/-

8. In the result, the appeal is allowed in part. Since, the Tribunal has already awarded Rs.1,14,692/-, after deducting the same the claimant is held entitled for an additional compensation of Rs.94,890/-. The amount awarded by the Tribunal as well as the enhanced amount shall carry interest at the rate of 6% from the date of application till its realization. Rest of the conditions of the impugned award shall remain intact.

9. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh